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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,574	08/04/2006	James Davidson	010180.00043	4765
24114 7590 05/13/2009 LyondellBasell Industries 3801 WEST CHESTER PIKE NEWTOWN SQUARE, PA 19073			EXAMINER WEBB, WALTER E	
			ART UNIT 1612	PAPER NUMBER
			MAIL DATE 05/13/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/552,574

Applicant(s)

DAVIDSON ET AL.

Examiner

WALTER E. WEBB

Art Unit

1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 February 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8, 11-17 and 19-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Walter E Webb/
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because: Applicant continues to argue that the compounds of Adams et al. and Archard et al. are not sufficiently similar. However, the issue here is whether the artisan would have known to use the compounds of Adams et al. for treating other disorders of the central nervous system such as obesity, gastrointestinal disorders, or smoking cessation. Smoking cessation would have been obvious, since Adams et al. teaches treating symptoms related to withdrawal of substance abuse. In regard to obesity and gastrointestinal disorders, Archard et al. teaches these disorders in a list of central nervous system disorders which also includes the ailments of Adams such as anxiety and epilepsy. It would have been obvious to treat obesity and gastrointestinal disorder with compounds of Adams et al., since Archard recognizes that central nervous disorders, including obesity and gastrointestinal disorders, can be treated via the same therapeutic agent. Archard et al. also teaches that the therapeutic agent is an azetidine derivative, which is also the same genre of the compounds of Adams et al.

Applicant argues that there is no evidence that any of the compounds of Archard are actually effective for any of the listed treatments. However, the Archard reference is used to provide what was known in the prior art in regard to azetidine derivatives and treatment of central nervous system disorders. There is no evidence provided by applicant that the reference teaches away or does not provide an enabling disclosure. The Examiner acknowledges that the compounds of Adams et al. and Archard et al. are not the same. However, since they are of the same genre, and overlap in their utility, there is at least a presumption that they could be used in a similar manner.

Finally, Applicant challenges the teachings of the Rosmond reference of the previous advisory action, stating that the reference's teachings are inconsistent with the Advisory Action's reliance as a starting point for the proposition that the GABA receptor antagonists of Adams would be obviously useful for treatment of obesity. However, it should be noted here that the Examiner did not and does not rely on Rosmond to establish a prima facie case of obviousness. The reference was used to rebut applicant's erroneous statement that GABA_A receptors are not known in the art to be associated with obesity. The reference, published by the International Journal of Obesity, taught a link between the GABA_A receptor subunit gene and abdominal obesity.